IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :: 16-04-2007

CORAM

THE HONOURABLE MR.JUSTICE P.SATHASIVAM
AND
THE HONOURABLE MR.JUSTICE S.TAMILVANAN

WRIT APPEAL Nos.3789 and 3790 of 2003
and W.A.M.P.Nos.6187 and 6188 of 2003

W.A.No.3789 of 2003
M.Mani ... Appellant /2nd Respondent

-vs-

1. Management of Bharat Heavy
Electricals Limited,
Indira Gandhi Industrial Complex,
Ranipet, Vellore District.

2. The Presiding Officer
Labour Court, Vellore - 4. ... Respondents/Petitioner
/Ist Respondent

W.A.No.3790 of 2003
1. T.A.Mathivanan (Died)
2. Samarthi
3. M.Rajesh Kanna
4. M.Ramesh Kanna
5. M.Gayathri ... Appellants
(Appellants 2 to 5 impleaded as LRs of
the deceased sole appellant vide order
of Court, dated 04.04.2007.

-vs-

1. Management of Bharat Heavy
Electricals Limited,
Indira Gandhi Industrial Complex,
Ranipet, Vellore District.

2. The Presiding Officer
Labour Court, Vellore - 4. ... Respondents/Petitioner/
Ist Respondent

Writ appeals filed under Clause 15 of the Letters Patent against the orders dated 31.07.2003 made in W.P.No.22978 of 2001 and W.P.No.5895 of 1998.

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W.P.No.22978 of 2001: Presented under Article 226 of the Constitution of India to issue a Writ of Certiorari caling for the records relating to the proceedings in I.A.No. 839/93 on the file of the Labour Court Vellore. and quash the awaard dated 6/8/2001 made in ID.No. 839/93.

W.P.No.5895/1998: Presetned ;under Article 226 of the Constitution of India to ssue a Writ of Certiorari calling for the recotrds contained on the file of the first Respondent Viz Presiding Officer, Labour Court, Vellore in I.A.No. 801/93 and quash the award dated 16/7/97.

For appellant : Mr.N.G.R.Prasad for
Mr.S.Vijayakumar in both the writ appeals

For respondents : Mr.B.T.Seshadri for R1 in both the writ appeals

C O M M O N J U D G M E N T

(Judgment of the Court was delivered by S.TAMILVANAN,J)

These writ appeals have been filed, challenging the common order passed by the learned single Judge in W.P.Nos. 22978 of 2001 and 5895 of 1998, in and by which, the awards passed by the Labour Court on two different dates were quashed and the matters were ordered to be remitted back to the said court, with a direction to consider the same afresh.

2. The brief facts of the cases are as follows :

The appellant in W.A.No.3789 of 2003, M.Mani is the second respondent in W.P.No.22978 of 2001 and was employed as driver under the first respondent herein, Bharath Heavy Electricals Limited, Ranipet. The appellant in W.A.No.3790 of 2003, T.A.Mathivanan is the second respondent in the connected W.P.No.5895 of 1998, who was also employed as driver under the first respondent, Bharath Heavy Electricals Limited, Ranipet and after his demise, his Legal Representatives were impleaded as appellants 2 to 5 in the said writ appeal.

3. In these writ appeals, for the sake of convenience, the appellant in W.A.No.3789 of 2003, M.Mani is being referred as the first appellant. The appellant in W.A.No.3790 of 2003, T.A.Mathivanan is referred as deceased appellant and his Legal Representatives are referred as appellants 2 to 5. The respondents in both the writ appeals are one and the same, hence, they are referred as stated in the writ appeals.

4. The writ petitions referred above were filed separately by the Management of Bharath Heavy Electricals Limited, Ranipet, against two separate awards passed by the Labour Court, Vellore, in two different Industrial Disputes, directing reinstatement of the concerned employees in service with back wages and other consequential benefits. Since the

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allegations were common and many of the questions raised were similar, both the writ petitions were taken up for hearing together, by the learned single Judge, and disposed of by a common order.

5. The charge against the aforesaid two employees of the first respondent was that they had clandestinely removed a heavy machinery known as "Face Milling Cutter" belongs to Bharath Heavy Electricals Limited, Ranipet. Based on the allegations, a criminal case in C.C.No.57/91 was instituted on the file of the Judicial Magistrate No.II, Walajapet, Vellore District, against the first appellant M.Mani (A2) and the deceased appellant (A1). After the trial, criminal court held that the accused are not guilty of the charge under Section 381 IPC and as per the Judgment of the criminal court, the prosecution has failed to prove its case beyond all reasonable doubt and accordingly, both were acquitted from the charges.

6. The first respondent, Management of Bharath Heavy Electricals Limited, Ranipet, also conducted separate departmental enquiry and held that the charge, as levelled against the first appellant and the deceased appellant were proved and accordingly, both were removed from service, with effect from 31.08.1991. Aggrieve by the order of termination from service, the first appellant and the deceased appellant have raised Industrial Dispute under Section 2A (2) of the Industrial Disputes Act, 1947, claiming reinstatement of service with all consequential benefits in I.D.Nos. 801/93 and 839/93. The Labour Court, Vellore, by its judgment, dated 06.08.2001 held that the charges levelled against the first appellant and the deceased appellant have not been proved and accordingly, directed the first respondent to reinstate them in service with continuity of service, back wages and other benefits. Aggrieved by which, W.P.No.5895/98 and W.P.No.22978/01 were filed by the first respondent herein. The learned single Judge, by order, dated 31.07.2003, allowed the writ petitions, by quashing the orders passed by the Labour Court, Vellore, and remanding back with a direction to dispose both the matters afresh. Aggrieved by which, the first appellant and the deceased appellant preferred these two writ appeals.

7. Mr.N.G.R.Prasad, learned counsel appearing for Mr.S.Vijayakumar, Advocate, submitted that the criminal case in C.C.No.57/91 ended in acquittal, since the prosecution has failed to establish the case beyond reasonable doubt and the Labour Court has also rightly come to the conclusion that the domestic enquiry conducted by the first respondent is not fair and proper. According to him, the power of this Court in the writ jurisdiction under Article 226 of the Constitution of India is limited, so far as it relates to the award of the Labour Court, as contemplated under Section 11 (A) of Industrial Disputes Act.

8. Admittedly, no oral evidence was let in on either side and Exs.W1 to W5 have been marked on the side of the workman and Exs.M.1 to M.6 were marked on the side of the respondent only by consent. No reason or

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explanation has been offered, as to why the first respondent has not chosen to examine any witness on their side, in order to prove cases against the workman / appellant. As per the evidence adduced by the first respondent, Management of Bharath Heavy Electricals Limited, the "Face Milling Cutter" could not have been removed by a single person. The criminal court, after the trial has acquitted the first appellant, M.Mani and the deceased appellant, T.A.Mathivanan, holding that the prosecution has failed to prove its case beyond reasonable doubt.

9. According to the learned counsel for the appellant, the Labour Court has given its finding, based on materials, which cannot be set aside, by invoking Article 226 of the Constitution of India. According to the learned counsel, there is no reason for remanding the matter for fresh disposal, since the award of the Labour Court was passed in accordance with law, and as per law laid down by the Hon'ble Apex Court, for which he relied on the decision, of the Hon'ble Apex Court, G.M.Tank v. State of Gujarat and others, reported in (2006) 5 SCC 446, wherein, it has been held that if the departmental proceeding and the criminal case are based on identical and similar set of facts and the charge of the departmental case against the appellant and the charge before the criminal court are one and the same and if the employee is Honourably acquitted in the criminal trial, during the pendency of the proceeding, contrary finding recorded in departmental proceeding, leading to dismissal has to be held unjust, unfair and oppressive and accordingly, the dismissal order passed against the employee was held unsustainable.

10. Per contra, Mr.B.T.Seshadri, learned counsel appearing for the first respondent submits that the charge in the criminal case and the charge in the departmental proceeding are not one and the same. It is not in dispute that the criminal case filed against the first appellant and the deceased appellant was ended in acquittal by the criminal court, on the ground that the prosecution has not established the case beyond reasonable doubt. The Learned counsel further contended that the criminal case was filed only on the ground of an alleged theft, but in the departmental enquiry, apart from the case of theft, their is an additional charge that the appellant was not found at the place of duty, which was not the issue before the criminal court. It is seen that the same arguments had been placed before the Labour Court, Vellore, but was negatived by the said court.

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11. The Labour Court, in its Judgment has held that "on a perusal of the charge sheet, it was found that the charges were not separated and the main charge before the criminal court, as well as in the departmental enquiry was that the petitioner had committed theft and the other incidents have been stated only as a collateral charge". Therefore, it cannot be construed that the charge in the departmental enquiry is different from the charges framed in the criminal case, in which the appellants were acquitted. As far as the appellants are concerned, the only point to be decided is whether the first appellant and the deceased

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appellant have committed theft of the material, as alleged by the first respondent. Therefore, as per the findings of the Labour Court, the points to be decided in the departmental enquiry, as well as before the criminal court are one and the same.

12. Considering the arguments advanced by both sides and on a perusal of the copy of the judgment rendered in the criminal case in C.C.No.57/91 and the awards of the Labour Court in I.D.No.839/93 and I.D.No.801/93, we are of the considered view that both the charges are based on the theft of the material, "Face Milling Cutter", belongs to the first respondent. The allegation that the appellant was not found at the place of duty, as found by the Labour Court is only collateral and not a different charge. Hence, the point for determination was whether the appellants have committed theft of the material, as alleged by the first respondent. Therefore, the criminal case, as well as the departmental enquiry were based on the very same charge of theft of "Face Milling Cutter", which was installed in the premises of the first respondent.

13. In support of his contention, Mr.B.T.Seshadri, learned counsel appearing for the first respondent has submitted the following decisions:

1. (2005) 2 M.L.J. 490, State of Tamil Nadu v. M.Veerappan
2. 2005 Writ L.R 188, Thenmozhi v. The Chairman & Managing Director, Neyveli Lginite Corporation and another
3. (2006) 2 SCC 255, T.N.C.S. Corpn. Ltd., v. K.Meerabai
4. 2006 (6) SCC 187, Divisional Controller, N.E.K.R.T.C. v. H.Amaresh
5. (2006) 7 SCC 180, U.P.SRTC v. Mitthu Singh
6. (2006) 6 SCC 366, Uttranchal Road Transport Corpn., v. Mansaram Nainwal
7. (2006) 9 SCC 172, N.Selvaraj v. Kumbakonam City Union Bank Ltd.,
8. (2006) 2 SCC 584, South Bengal State Transport Corpn. V. Sapan Kumar Mitra
9. (2005) 7 SCC 764, Ajit Kumar Nag v. General Manager (PJ), Indian Oil Corpn., Ltd.,

14. In the decision, State of Tamil Nadu v. M.Veerappan, reported in (2005) 2 M.L.J 490, the Division Bench of this Court has held that even if delinquent official is acquitted by criminal court, he can be found guilty in the departmental proceeding.

15. In the decision, Thenmozhi v. The Chairman & Managing Direction, Neyveli Lignite Corporation and another, reported in 2005 Writ L.R. 188, the Division Bench of this Court has held that on the same set of allegations of charges, a departmental proceeding as well as criminal case can be initiated and both are independent. The out come of the one will not have any bearing on the other, since the standard of proof required in the two proceedings and the procedure are totally different and hence, even if an employee is acquitted by criminal court, he can be found guilty

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in the departmental proceeding.

16. In the decision, T.N.C.S. Corpn. Ltd., v. K.Meerabai, reported in 2006 (2) SCC 255, the Hon'ble Supreme Court of India, has ruled that departmental enquiry and criminal proceedings are quite distinct and dissimilar and the standards of proof, required in a criminal case and departmental proceeding are also different and that the scope of review is limited, with regard to departmental proceeding. As per the said rulings of the Hon'ble Apex Court, interference of this Court would not be warranted, unless the orders passed by the quasi-judicial authorities are clearly unreasonable or perverse or manifestly illegal and grossly unjust.

17. In the decision, G.M.Tank v. State of Gujarat, reported in (2006) 5 SCC 446, the Hon'ble Apex Court has held, with regard to the sustainability of the departmental enquiry and the dismissal of the delinquent official thereon, after the criminal case ended in acquittal. When the departmental proceeding and the criminal case were based on the same set of facts and as there was no evidence against the employee to hold him guilty, the criminal court recorded an Honourable acquittal, and a contrary finding in the departmental proceeding, resulting in dismissal of the delinquent official from service was held unjust, unfair and oppressive.

18. It is relevant to refer the decision, Corporation of Nagpur City, Civil Lines v. Ramachandra reported in (1981) 2 SCC 714, at page number 718, wherein the Hon'ble Apex Court has held as follows :

> " 6. Normally when the accused is acquitted honourably and completely exonerated of the charge it would not be expedient to continue a departmental enquiry on the very same charges or grounds or evidence, the power of the authority concerned to continue the departmental enquiry is not taken away not is its direction in any way fettered. However, as quite some time has elapsed since the departmental enquiry had started the authority concerned will take into consideration this factor in coming to the conclusion if it is really worthwhile to continue the departmental enquiry in the event of the acquittal of the respondents. If, however, the authority feels that there is sufficient evidence and good grounds to proceed with the enquiry, it can certainly do so."

19. In the decision, Commissioner of Police v. Narender Singh, reported in (2006) 4 SCC 265, the Hon'ble Apex Court has categorically held that mere acquittal in a criminal trial itself is not a ground to initiate any departmental proceedings.

20. Taking into consideration of various decisions of the Hon'ble Apex Court, the Division Bench of this Court in the decision, The Deputy Superintendent of Police v. W.D.Sekaran reported in 2005 (5) CTC 672, has

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held that it is not 'axiomatic' in all cases, where the criminal proceedings based on very same set of facts ended in acquittal, departmental action should not be proceeded with against the delinquent.

21. Here in the instant case, as per the Judgment, dated 24.11.1992, made in C.C.No.57/91, on the file of the Judicial Magistrate No.II, Walajapet, the first appellant, M.Mani and the deceased appellant, T.A.Mathivanan were acquitted, on the ground that they were not guilty of the charge under Section 381 IPC and that the prosecution has failed to prove its case beyond all reasonable doubt.

22. In the light of the catana of decisions of the Hon'ble Supreme Court, we are of the considered view that mere acquittal in the criminal case would not entitle the delinquent official to get discharge from the departmental proceeding. But, if it is an Honourable acquittal, contrary finding in the departmental proceeding, resulting in dismissal of the delinquent official from service would be held unjust, unfair and oppressive, as per the ruling of the Hon'ble Apex Court in the decision, rendered in G.M.Tank v. State of Gujarat, and reported in (2006) 5 SCC 446. Similarly, interference of this Court would be warranted in the orders passed by the quasi-judicial authorities, only when there is any manifest illegality, grossly unjust or perverse finding, leading to miscarriage of justice.

23. As contended by the learned counsel for the appellants, the Labour Court can go into the appreciation of evidence, while passing award, under the Industrial Disputes Act, where as the jurisdiction of this Court under Article 226 is comparatively limited. According to the learned counsel for the appellants, the judgment of acquittal recorded by the criminal court, available in the typed set, would show that it is an Honourable acquittal, since the prosecution has failed to establish the case against the accused therein.

24. The orders of termination of service passed by the first respondent had been challenged in I.D.Nos.839/93 and 801/93, before the Labour Court, under Section 2A(2) of Industrial Disputes Act, 1947, by the first appellant and the deceased appellant respectively. The learned counsel for the respondent has not disputed the jurisdiction of the Labour Court in deciding the validity of the order passed by the first respondent, as per the Industrial Disputes Act. In the awards passed by the Labour Court, it has been held that the departmental enquiry was not conducted in accordance with the principles of natural justice.

25. As per the finding of the Labour Court, enquiry conducted by the first respondent was vitiated by principles of natural justice and that the finding in the departmental proceeding was not fair and proper. Admittedly, no witness was examined on both sides before the Labour Court. On a perusal of Ex.M.1, marked by consent, the Labour Court has given its finding that the Management witness has deposed that a single man cannot

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handle the "Face Milling Cutter", which is a sharp edged material. Further, there is no witness for the alleged removal of the said material from the store room by the first appellant or the deceased appellant or both. At page number 39 of the typed set filed in W.A.No.3789 of 2003, it is seen that the Labour Court has held as follows: "The criminal court has found that there is no evidence as to when the material was removed and that the prosecution witness have not clearly stated as to where the object was kept and how they have been removed. P.W.9 in his evidence had stated that the material weighed 500 Kg and though the criminal court had not accepted the case of the accused that the material cannot be lifted by two person. On the basis of oral evidence of PW1, the Court had held that the material could be lifted only by crane and that it cannot be lifted by one person."

26. As per the finding of the learned Presiding Officer of the Labour Court, it is not the case of the first appellant that the material relating to the alleged theft was lifted and brought down by two persons. The finding of the criminal court is that it is not possible to build the case of prosecution of theft, when it was not possible for one person to lift the material, when there was vigilance and adequate security. As per the finding of the criminal court, available in its judgment, in the criminal case, the material, which is the subject matter of the alleged theft was weighing about 80 Kgs and it would not be possible to be taken out from the shop, since there were adequate security staff.

27. It is not in dispute that the first appellant and the deceased appellant were only drivers. As found by the Labour Court, the finding of the departmental enquiry, resulting in dismissal of the employees is not based on evidence. There is no reason, as to why no witness was examined on the side of the first respondent Management before the Labour Court, to establish the charges leveled against the first appellant and the deceased appellant and the same has been pointed out in the award passed by the Labour Court. Apart from the judgment of acquittal recorded by the criminal court, the Labour Court after analyzing the evidence adduced by both sides, has categorically given its finding with proper reasoning.

28. We could find no manifest error, illegality or perverse finding in the awards passed by the Labour Court, so as to warrant the interference of this Court, under Article 226 of the Constitution of India.

29. As contended by the learned counsel for the appellant, we are of the considered view that 12 years after the alleged occurrence and after the acquittal of the appellants by the criminal court and after the award passed by the Labour Court, in favour of the first appellant and the deceased appellant, the impugned orders passed in the writ petitions, remanding the case to Labour Court, for fresh disposal, would not meet the ends of justice.

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30. It is not in dispute that out of the two appellants, the appellant in W.A.No.3790 of 2003, died after the award was passed by the Labour Court. There is no justifiable reason for not examining any witness on the side of the first respondent Management, Bharath Heavy Electricals Limited, Ranipet, before the Labour Court, to establish the charges leveled against the delinquent official, when they were acquitted by the criminal court. We are of the considered view that the same cannot be rectified by remanding the matter back to the Labour Court for fresh disposal, after 12 years. It is seen that the Labour Court has not passed the awards, merely on the basis of the acquittal recorded by the criminal court, but it has gone in detail and has given its finding based on the evidence available on record.

31. Learned single Judge has also specifically pointed out in the impugned order that the matter is a pretty old case. In such circumstances, we are of the considered view that remanding the matter to the Labour Court, for fresh disposal would not meet the ends of justice.

32. Therefore, in the light of the decisions rendered by the Hon'ble Apex Court cited supra, we are of the considered view to allow the writ appeals and set aside the impugned orders passed in W.P.No.22978 of 2001 and W.P.No.5895 of 1998.

33. The Labour Court, by its awards has directed that the respondent should reinstate the appellant with continuity of service, back wages and other benefits. In W.A.No.3790 of 2003, the appellant T.A.Mathivanan has been reported dead and therefore, the direction for reinstatement became infructuous. In the light of various decisions of the Hon'ble Apex Court and on the facts and circumstances of the case, we are of the considered view that the first appellant and the Legal Representatives of the deceased appellant are not entitled to back wages, on the principle of "No work No pay".

34. However, the appellant in W.A.No.3789 of 2003, M.Mani is entitled to be reinstated and get continuity of service and other attendant benefits, except the back wages for the period actually not rendered any service.

35. The eligible Legal Representatives of the deceased appellant, T.A.Mathivanan are entitled to get monetary benefits, payable due to the death of the deceased appellant, in view of the award passed by the Labour Court, except back wages.

36. It is made clear that though we are declined to grant back wages, it is clarified that what ever benefits available / eligible during the pendency of the writ proceedings shall be paid to the Legal Representatives of T.A.Mathivanan and to M.Mani.

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P.SATHASIVAM, J.
and
S.TAMILVANAN, J.

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37. With the above observations, the writ appeals are allowed accordingly. No costs. Consequently, connected W.A.M.P.Nos.6187 and 6188 of 2003 are closed.

tsvn

Sd/
Asst. Registrar

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Sub Asst.Registrar

To

1.The Presiding Officer
Labour Court, Vellore - 4.
+ 2 CCs to Mr. B.T. Seshadri, Advocae sR 24648, 24647
+ 2 CCS to Mr. S. Vijayamumar Advocate SR 24633 & 24602)
TEJ (co)
sg 21/4/07

Common Judgment in
W.A.Nos.3789 and 3790 of 2003
16-04-2007

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